

Exhibit 71

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-jmp

4 Case No. 08-01420-jmp

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6 In the Matter of:

7 LEHMAN BROTHERS HOLDINGS INC., ET AL, .

8 Debtors.

9 - - - - - x

10 In the Matter of:

11 LEHMAN BROTHERS INC.

12 Debtor.

13 - - - - - x

14 LBHI,

15 Plaintiff,

16 v.

17 JPMORGAN CHASE BANK, N.A.,

18 Defendant.

19 - - - - - x

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21 U.S. Bankruptcy Court

22 One Bowling Green

23 New York, New York

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February 13, 2013

10:04 AM

B E F O R E :
HON JAMES M. PECK
U.S. BANKRUPTCY JUDGE

1 Hearing re: LBHI's Objection to Proofs of Claim Number
2 14824 and 14826 [ECF No. 30055]

3
4 Hearing re: Debtors' Sixty-Seventh Omnibus Objection to
5 Claims (Value Derivative Claims) [ECF No. 12533]

6
7 Hearing re: Debtors' Eighty-Fourth Omnibus Objection to
8 Claims (Value Derivative Claims) [ECF No. 13955]

9
10 Hearing re: Two Hundred Eighty-Second Omnibus Objection to
11 Claims (Late Filed Claims) [ECF No. 27374]

12
13 Hearing re: Joint Motion of Lehman Brothers Holdings Inc.
14 and Litigation Subcommittee of Creditors' Committee to
15 Extent Stay to Avoidance Actions and Grant Certain Related
16 Relief [ECF No. 33322]

17
18 Hearing re: One Hundred Eighty-Third Omnibus Objection to
19 Claims (No Liability CMBS Claims) [ECF No. 19407]

20
21 Hearing re: One Hundred Forty-Third Omnibus Objection to
22 Claims (Late-Filed Claims) [ECF No. 16856]

23
24 Hearing re: Three Hundred Twenty-Eighth Omnibus Objection
25 to Claims (No Liability claims) [ECF No. 29323]

1 Hearing re: LBHI v. JPMorgan Chase Bank, N.A. [Adversary
2 Proceeding No. 10-03266]

3
4 Hearing re: Motion of Fidelity National Title Insurance
5 Company to Compel Compliance with Requirements of Title
6 Insurance Policies [ECF No. 11513]

7
8 Hearing re: Motion of Traxis Fund LP and Traxis Emerging
9 Market Opportunities Fund LP to Compel Debtors to Reissue
10 Distribution Checks for Allowed Claims [ECF No. 32163]

11
12 Hearing re: Cardinal Investment Sub I, L.P. and Oak Hill
13 Strategic Partners, L.P.'s Motion for Limited Intervention
14 in the Contested Matter Concerning the Trustee's
15 Determination of Certain Claims of Lehman Brothers Holdings
16 Inc. and Certain of Its Affiliates [LBI ECF No. 4634]

17
18 Hearing re: Motion Pursuant to Federal Rule of Bankruptcy
19 Procedure 9019 for Entry of an Order Approving Settlement
20 Agreement [LBI ECF No. 5483]

21
22 Hearing re: Trustee's Motion Pursuant to Section 105(a) of
23 the Bankruptcy Code and Bankruptcy Rules 3007 and 9016(b)
24 for Approval of General Creditor Claim (I) Objections
25 Procedures and (II) Settlement Procedures [LBI ECF no. 5392]

1 Hearing re: Motion of FirstBank Puerto Rico for (1)
2 Reconsideration, Pursuant to Section 502(j) of the
3 Bankruptcy Code and Bankruptcy Rule 9024, of the SIPA
4 Trustee's Denial of FirstBank's Customer claim, and (2)
5 Limited Intervention, Pursuant to Bankruptcy Rule 7024 and
6 Local Bankruptcy Rule 9014-1, in the Contested Matter
7 Concerning the Trustee's Determination of Certain Claims of
8 Lehman Brothers Holdings Inc. and Certain of Its Affiliates
9 [LBI ECF No. 5197]

10

11 Hearing re: Motion of Elliott Management Corporation For an
12 Order, Pursuant to 15 U.S.C. §§ 78fff-1(B), 78fff-2(B) and
13 78fff-2(C) (1) and 11 U.S.C. § 105(A), (I) Determining the
14 Method of Distribution on Customer Claims and (II) Directing
15 an Initial Distribution on Allowed Customer Claims [LBI ECF
16 No. 5129]

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24 Transcribed by: Dawn South, Nicole Yawn, Sherri Breach,
25 Jamie M. Weeks

1 A P P E A R A N C E S :

2 WEIL, GOTSHAL & MANGES LLP

3 Attorney for the Debtors

4 1300 Eye Street NW, Suite 900

5 Washington, DC 20005-3314

6

7 BY: PETER D. ISAKOFF, ESQ.

8

9 WEIL, GOTSHAL & MANGES LLP

10 Attorneys for the Debtors

11 767 Fifth Avenue

12 New York, NY 10153-0119

13

14 BY: MAURICE HORWITZ, ESQ.

15 JACQUELNE MARCUS, ESQ.

16

17 KIRKLAND & ELLIS LLP

18 Attorney for the Debtors

19 601 Lexington Avenue

20 New York, NY 10022

21

22 BY: JOSEPH SERINO, JR., ESQ.

23

24

25

1 CURTIS, MALLET-PREVOST, COLT & HOSLE LLP
2 Attorneys for the Debtors
3 101 Park Avenue
4 New York, NY 10178-0061
5

6 BY: JOSEPH D. PIZZURRO, ESQ.
7 MICHAEL MOSCATO, ESQ.
8

9 SULLIVAN & CROMWELL LLP
10 Attorneys for Canary Wharf
11 125 Broad Street
12 New York, NY 10004-2498
13

14 BY: MARC DE LEEUW, ESQ.
15 JOHN J. JEROME, ESQ.
16 DAVID B. TULCHIN, ESQ.
17

18 BRICKER & ECKLER LLP
19 Attorney for Nationwide
20 100 South Third Street
21 Columbus, OH 43215-4291
22

23 BY: QUINTIN F. LINDSMITH, ESQ.
24
25

1 LOWENSTEIN SANDLER

2 Attorney for Boilermakers Pension Fund

3 65 Livingston Avenue

4 Roseland, NJ 07068

5

6 BY: MICHAEL S. ETKIN, ESQ.

7

8 YOUNG CONAWAY STARGATT & TAYOR, LLP

9 Attorneys for CF Midas

10 Rockefeller Center

11 1270 Avenue of the Americas

12 Suite 2210

13 New York, NY 10020

14

15 BY: DANIEL F.X. GEOGHAN, ESQ.

16 PATRICK JACKSON, ESQ.

17

18 KAYE SCHOLER LLP

19 Attorneys for Spanish Broadcasting

20 425 Park Avenue

21 New York, NY 10022-3596

22

23 BY: MADLYN GLEICH PRIMOFF, ESQ.

24 JOSEPH OTCHIN, ESQ.

25

1 WACHTELL, LIPTON, ROSEN & KATZ

2 Attorneys for JPMorgan

3 51 West 52nd Street

4 New York, NY 10019-6150

5

6 BY: MARC WOLINSKY, ESQ.

7 HAROLD S. NOVIKOFF, ESQ.

8 CHRISTOPHER S. SZCZERBAN, ESQ.

9

10 MILBANK, TWEED, HADLEY & MCCLOY LLP

11 Attorney for the Official Committee

12 One Chase Manhattan Plaza

13 New York, NY 10005-1413

14

15 BY: DENNIS C. O'DONNELL, ESQ.

16

17 HUGHES HUBBARD

18 Attorney for the SIPA Trustee

19 One Battery Park Plaza

20 New York, NY 10004-1482

21

22 BY: JEFFREY S. MARGOLIN, ESQ.

23

24

25

1 QUINN ENANUEL URQUHART & SULLIVAN, LLP
2 Attorney for the Creditors' Committee
3 51 Madison Avenue, 22nd Floor
4 New York, NY 10010
5

6 BY: ANDREW J. ROSSMAN, ESQ.
7

8 WOLLMUTH MAHER & DEUTSCH LLP
9 500 Fifth Avenue
10 New York, NY 10110
11

12 BY: ADAM M. BIALEK, ESQ.
13

14 WONG FLEMING
15 821 Alexander Rd., #150
16 Princeton Township, NJ 08540
17

18 BY: JAMES HANEY, ESQ.
19

20 ALSO PRESENT:

21 DAVID WALSH
22

23 ALSO PRESENT TELEPHONICALLY:

24 JOY DORAN

25 PAUL S. JASPER

1 MICHAEL NEUMEISTER

2 SARAH SCHINDLER-WILLIAMS

3 MICHAEL ZEKYRGIAS

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P R O C E E D I N G S

THE COURT: Be seated, please. Good morning.

Who's our master of ceremonies today?

MR. ISAKOFF: Well, Your Honor, I'm not necessarily the master of ceremonies for the whole day, but I'm here for the first matter.

Peter Isakoff of Weil, Gotshal representing LBHI in connection with the large claims filed by Canary Wharf entities that total \$780 million, it's a status conference. The claim numbers are 14824 and 14826.

We were last here -- last here on January 16th where we had begun discussions concerning procedures and had a status conference at that time where Your Honor asked that we continue the discussions.

We have done so, and I'd like to report on that and state where I think the parties are in disagreement, which is unfortunately the case, but let me walk through a little bit as to what happened and then we can see where we can go from there.

THE COURT: Okay. I did take a look at the submission that Canary Wharf filed of record so I have their perspective.

MR. ISAKOFF: And I'm here today to give you ours, Your Honor.

THE COURT: Fine.

1 MR. ISAKOFF: On January 23 we met by telephone
2 and they -- we concluded without any -- reminisced anything
3 except that they very much wanted us to specify what
4 discovery it was we were seeking, but we endeavored to do
5 that in a letter of January 29, which was part of the
6 submission given to Your Honor.

7 Basically what we said is that if we could agree
8 on the basic parameters of discovery we would agree that we
9 could do it in phases as they wished to postpone any
10 discovery relating solely to the amount of damages, if any,
11 at a later time, and then we outlined what would be the
12 categories in a document request that expressly would carve
13 out anything concerning the quantum of damages.

14 We did indicate that we had to reserve the right
15 to do any necessary follow up based on what we received,
16 that the tools of discovery would be unlimited in the sense
17 that maybe we'd want to do interrogatories, maybe we'd want
18 to do request for admissions. We did not say contrary to
19 their submission that discovery would be unlimited, just
20 that the available tools would be the usual ones.

21 The document requests and production would be
22 followed by fact depositions and then expert reports and
23 depositions of them, including the Queen's counsel. There
24 may not be any other experts, we don't know yet.

25 We said that ADR of some sort might be

1 appropriate, but that we were unwilling at least prior to
2 discovery to determine what would be the appropriate ADR
3 procedure to follow. In our view it may be that mediation
4 in particular would be very fruitful, but after we found out
5 what the factual record would be.

6 They responded on February 1 with an exceedingly
7 limited scope of discovery. As we read it, and I'm sure
8 they'll correct me if I'm wrong, they promised to produce
9 proof that the Lehman subsidiary stopped paying rent at the
10 end of March 2010. I don't believe we even asked for that
11 and I don't know that there'd be any contest about that.

12 There was an exchange of emails between counsel
13 for Canary Wharf and for LBHI on December of 2010, around
14 the time of the forfeiture letter, and they offered to
15 produce the exchange of all emails between counsel for the
16 parties, which we undoubtedly already have. Then they
17 wanted to take depositions of the two counsel in the email
18 exchange, and that was at -- they submitted a short
19 stipulation of a few of the relevant facts.

20 And on the 5th we responded that, you know, given
21 the size of these claims and given the amounts in dispute
22 and the stakes for LBHI and its creditors, that we could not
23 agree to any such truncated discovery, that we --

24 THE COURT: Can you explain that to me? Because
25 one of the obvious areas of disagreement between the parties

1 at this stage is whether this is a big deal leading up to a
2 limited evidentiary hearing in which two solicitors provide
3 their opinions as to applicable English law or whether or
4 not there is a targeted more limited deal in anticipation of
5 that hearing.

6 And what I gather is that the debtors' perspective
7 is that there should be very broad discovery leading up to
8 that hearing, and it is Canary Wharf's position, if I'm
9 understanding it correctly, that they're inclined to be more
10 targeted. Am I right on that?

11 MR. ISAKOFF: I would disagree certainly with the
12 view that what they're looking for is something targeted. I
13 think what they're doing is putting the target behind a
14 black box and not letting us into it.

15 I've just described the discovery that they say
16 they'd be willing to give us and it just is essentially
17 nothing.

18 What we are looking for -- and I can go through it
19 chapter and verse on this, Your Honor, go through the
20 categories in our January 29 letter and explain why we need
21 it --

22 THE COURT: We can -- we can do that if necessary,
23 but maybe before we get to that it would be helpful to
24 understand what we're really talking about.

25 MR. ISAKOFF: Okay. And I will do that.

1 THE COURT: Because it's my understanding that
2 we're dealing with what is in effect a bifurcated process in
3 which damage issues will be put to one side and in effect
4 it's a bifurcated trial as to liability with damages to
5 follow only if there is liability. And as to the liability
6 phase the parties agree that the issue is totally driven by
7 how English law is interpreted here and how it applies to
8 the documents.

9 MR. ISAKOFF: Well, I would amend that, Your
10 Honor, by saying that how it applies to the documents may
11 very well depend on a variety of facts, and I'd like to
12 explain a little bit why.

13 THE COURT: Okay.

14 MR. ISAKOFF: All right.

15 THE COURT: But just if you'll bear with me. What
16 I'm trying to figure out, and I think you're about to tell
17 me, is how broader-based discovery plays into that inasmuch
18 as my understanding is that the real legal issue is driven
19 by what some solicitors say, and in my simplistic way of
20 looking at this it's a little bit like expert discovery with
21 expert reports and depositions of the expert and with the
22 discovery being perhaps limited to what the experts relied
23 upon, took into consideration, and how they informed
24 themselves to the point that they're able to express an
25 opinion.

1 And it seems to me -- and I may be overly narrow
2 in my view and I may appear to be -- prepared to be
3 influenced by your comments -- but it seems to me that
4 that's what we're talking about here, and I think you're
5 thinking that this is a bigger deal.

6 MR. ISAKOFF: Well, first of all what the QCs have
7 said is based upon what was available to them, and of course
8 at some time it would be appropriate to depose them and
9 perhaps have them testify before Your Honor as to their
10 opinions and what they base it on, but the record is not
11 closed, the record has not even begun to open, and there are
12 a number of things which I can go through here --

13 THE COURT: Well, why don't you --

14 MR. ISAKOFF: -- which could very well have been
15 influenced on what they --

16 THE COURT: -- why don't you tell me what it is
17 that you think you need in order to prepare for this hearing
18 and I'll hear from Canary Wharf's counsel as to whether they
19 agree or disagree with that.

20 It's highly unusual in this case for experienced
21 and competent attorneys such as are involved here not to be
22 able to reconcile a discovery plan in anticipation of what I
23 think everybody recognizes is a hearing that has a narrow
24 focus or at least a liability only focus, which will be
25 driven by incredibly my interpretation of English law

1 documents and my interpretation and application of English
2 law to those documents. It's one of the reasons why I
3 thought London-based arbitration might not be a bad approach
4 here.

5 MR. ISAKOFF: And perhaps one day once we've seen
6 what the record is and what's in their files we'll come to
7 the same conclusion, Your Honor, but let me just talk a
8 little bit about what's involved here and why it is we need
9 discovery.

10 First of all there are two basic groups of issues.
11 One issue concerns whether the settlement or the agreement
12 reached between Canary Wharf and LBL to effectively waive
13 Canary Wharf's administration expense claim of about
14 30 million pounds in exchange for a payment of one and a
15 half million pounds from LBL. And the as between the two
16 QCs is whether or not (a), this is a guarantee, which is
17 what we said, or an indemnity, which is what they say, and
18 then whether this was a material alteration of the -- LBHI's
19 risk.

20 Their position is, well, the QCs don't rely on
21 parole evidence therefore why do you need it?

22 Now, we've sought, and we do this in our January
23 29 letter, the negotiation documents leading up to the lease
24 and the guarantee that's part of lease, that's Schedule 4,
25 including drafts, notes, and communications, and so forth.

1 And why are we seeking that parole evidence?

2 Because it may be that although we take the position that --
3 and our QC does -- that this guarantee is a guarantee not an
4 indemnity, and they take the position based on the contract
5 that it's an indemnity not a guarantee, that Your Honor may
6 feel that there's an ambiguity as to which parole evidence
7 would be admissible, similar to what we did in the Bank of
8 America case where we had -- you know, where the parole
9 evidence turns out to be very informative. So that's those
10 categories, that's one and two.

11 Category three is documents that they contend
12 support or that they're going to use in support of their
13 claims. That's just a question of, you know, getting notice
14 of what it is that they're planning on using.

15 Then we get into the JPMorgan transaction, and
16 that's a little bit different issue from the guarantee
17 versus indemnity. Because if we're right that it's a
18 guarantee and we're right that this deal that they made
19 vitiated the guarantee completely then the case is over, but
20 we're not litigating it -- that claim first and then the
21 others, we're litigating them all at once.

22 And the next one really has to do with their claim
23 that an email exchange between one of my partners and
24 somebody at Sullivan & Cromwell was an anticipatory
25 repudiation of an obligation to take a substitute lease that

1 an email exchange took place before the forfeiture, whereas
2 the lease document and the guarantee document. Section 7 of
3 the guarantee says that one of two things happens. If
4 there's a forfeiture, which there was on December 10th,
5 either LBHI is liable for rent until a new tenant comes in
6 -- which happened in this case 10 days later -- or 180 days,
7 whichever is earlier. So we're saying we're only liable for
8 ten days rent beginning December 10th to December 20th.

9 They say but wait a minute, Richard Cransnell (ph)
10 that, well, we're not inclined to take the lease. Okay?
11 But they hadn't tendered it and their -- and so they didn't
12 comply with the obligation. In other words they could have
13 after forfeiture gone to LBHI and said, you take a
14 substitute lease. They never did that.

15 They're relying on this email exchange. And what
16 we're saying is the following. There's something funny
17 going on. Because this is a transaction for I believe it
18 was a million square feet of space between Canary Wharf and
19 JPMorgan. We are told, although we have never seen it, that
20 there was a memorandum of understanding in August of 2010,
21 four months before this email exchange. They never told us
22 about it, we've never seen it. They didn't consult us
23 concerning the forfeiture letter transaction, they -- we
24 learned almost through the grapevine that there's some
25 transaction going on while we're in the midst of trying to

1 do settlement discussions with them. We don't learn about
2 it from them. And they turn to us and say, well, if you
3 want to see the JPMorgan transaction you tell us that you're
4 not interested in taking the lease.

5 And why do they do that? Is it is it because
6 JPMorgan insists that there be no delay? Is it because they
7 don't want to have to comply with the automatic stay? Is it
8 because if they tender the lease to us maybe we're going to
9 see with the JP Morgan transaction maybe we can do better
10 than simply declining it and take it and maybe do our own
11 deal? We weren't given any of those opportunities.

12 What they did was that, you know, quickly put
13 pressure, if we want to see this transaction to say okay we
14 don't really want the lease and then try to use that to have
15 their cake and eat it to. They do their transaction, they
16 try to stick us as if they had complied with the transaction
17 documents.

18 Now, we think we're entitled to see not just their
19 internal communications, which are probably privileged, but
20 we would like to see their communications between them and
21 JPMorgan and see whether this was a concerted strategy, at
22 least on Canary Wharf's part. If so that may suggest that
23 the basis for their anticipatory repudiation is not in good
24 faith, that they're not entitled to some extraordinary
25 relief from not having complied with the agreement, which is

1 what they did. They did not comply with it, and they're
2 seeking to use this email exchange as a substitute. And we
3 think we're entitled to explore the answers to these
4 questions.

5 We don't think that it's a tremendous amount of
6 discovery, we don't think it's wide-ranging. How long it
7 takes to do it is frankly dependent on them. We would serve
8 a discovery request if Your Honor permitted this week. I
9 suspect we're going to wind up here in disputes based upon
10 the positions that they've taken in their letters and Your
11 Honor may have to resolve them.

12 THE COURT: You know how I love discovery
13 disputes.

14 MR. ISAKOFF: I know you don't, Your Honor, and I
15 would love to avoid it, but where I'm being told that what
16 we'll give you is the exchanges that you already have
17 between counsel, you know, and no discovery concerning
18 things that I think the QCs would have to explain and take
19 into account in a more full way in doing an opinion that's
20 not preliminary but it's based upon an evidentiary record.
21 That's what we're looking for, Your Honor.

22 THE COURT: Let me -- let me hear from counsel for
23 Canary Wharf, recognizing that I have a pretty good
24 understanding of their position as a result of what I read.
25 I now have a pretty good understanding of your position as a

1 result of what you've said.

2 MR. ISAKOFF: Thank you, Your Honor.

3 THE COURT: And I have an inclination, which I'm
4 going to mention even before I hear from Canary Wharf's
5 counsel, which is this status report turns out to be more in
6 the nature of a discovery dispute already, and we have a
7 fairly full courtroom and we have a fairly congested morning
8 calendar as well as a 2 o'clock calendar.

9 It occurs to me that the parties still need to do
10 more work to -- excuse me -- narrow the issues, and --
11 excuse me -- I'm going to need to excuse myself and have
12 some water. In fact that's what I'm going to do. I'm going
13 to take a minute, nobody move, nobody get up.

14 (Laughter)

15 THE COURT: I'm going to go in there, I'm going to
16 come back.

17 (Recess at 10:23 a.m.)

18 THE COURT: I will pick up not exactly where I
19 left off.

20 It seems to me that more time needs to be spent
21 seeking accommodation with respect to scope. To the extent
22 that you achieve that you should endeavor to develop an
23 agreed order. To the extent you are unable to achieve that
24 we should have a discovery conference. It does not need to
25 be on an omnibus hearing date, and it probably should be in

1 chambers rather than just on the phone. That will give the
2 parties an opportunity, to the extent they can't work things
3 out, to provide me with a clearer and more detailed
4 understanding as to just exactly why you can't get along on
5 this subject.

6 I understand from what you're saying, Mr. Isakoff,
7 that from Lehman's perspective you're not trying to expand
8 the scope but you are trying to understand more about
9 conduct and motivation. I understand that from Canary
10 Wharf's perspective they view this as a fairly
11 straightforward question of applying law to facts. I
12 suspect that's what the problem lies.

13 MR. ISAKOFF: I suspect so too, Your Honor, and
14 certainly we would endeavor to try to reach agreement and to
15 limit discovery to whatever it is that we feel is essential.

16 THE COURT: Okay. I'm not trying to squelch
17 comments from Canary Wharf's counsel, so this is an
18 opportunity for counsel to be heard.

19 MR. LEEUW: Thank you very much, Your Honor. Marc
20 De Leeuw from Sullivan & Cromwell, counsel to Canary Wharf.

21 Your Honor, I appreciate your guidance at the end
22 of Mr. Isakoff's comments, and we'll obviously follow your
23 direction.

24 If I could I'd like to just give a little bit of
25 an overview of why I think -- I think Your Honor's

1 observation of the issue that's separating the parties is
2 absolutely correct and then give us -- give just a little
3 bit of a general explanation of our position on this, which
4 I think Your Honor now understands from having read our
5 submission.

6 I think Your Honor's observation that what's going
7 on here for the liability phase, for the evidentiary hearing
8 where the two Queen's counsel would testify is absolutely
9 right. It's really a question of interpretation of
10 documents, specifically agreements, the LBL agreement and
11 the indemnity agreement, which is attached to the lease, and
12 the application of English law principals to those
13 documents. And in fact that's actually what the two Queen's
14 counsels did. Both of them rendered opinions on liability
15 solely by reference to those documents and to those English
16 law principals.

17 THE COURT: But here's the problem. This would be
18 true even if we were dealing with the application of New
19 York law. The fact that two reputable and well-informed
20 solicitors review the same documents and come to opposite
21 legal conclusions suggests that somebody is wrong, that
22 somebody is clearly wrong. And that raises a question as to
23 how that could be. And in a setting like that one might
24 need to drill down a little bit as to what led to those
25 curiously contrary positions.

1 MR. LEEUW: And, Your Honor, I think Your Honor
2 mentioned drilling down with respect to potentially
3 depositions of the two Queen's counsel. That's really not I
4 think the primary debate between the parties here. If
5 that's the issue of course we can speak about that question,
6 and I understand that, but the question about whether the
7 two solicitors have a difference of opinion about the law is
8 really -- you're right, no different than if Mr. Isakoff and
9 I had a disagreement about New York law. We'd both be
10 putting in briefs, we'd both be citing different cases or
11 statutes or applies law to specify documents. That wouldn't
12 mean that it's a question that needs discovery, it wouldn't
13 mean that somebody, Your Honor in this case, would be
14 deciding what is the right view of New York law in that
15 circumstance. And that's really what we have.

16 To give just an example Mr. Isakoff said there's
17 really sort of two buckets here. He said the first bucket
18 is whether there -- whether the releases in the agreement
19 between Canary Wharf and LBL discharges LBHI of its
20 obligations, and it says there's a whole bunch of buckets.
21 And then it says, well, maybe there's some discovery.

22 That's exactly the issue that when we were here
23 last month Mr. Isakoff stood up before Your Honor and Your
24 Honor said, what can we have an oral argument on without the
25 need for any discovery? And Mr. Isakoff said explicitly,

1 that issue, the issue that he just said a moment ago
2 requires discovery requires no discovery because the facts
3 are effectively undisputed, it is just an issue of English
4 law. That's exactly what he said. It's on page 12 of the
5 transcript.

6 Lehman has argued -- the debtors have argued that
7 these are issues -- that issue could be resolved by Your
8 Honor, but Your Honor, we're mindful of your guidance.

9 I think the real dispute between the parties
10 that's been framed in these letters is exactly what Your
11 Honor pointed out. There's a narrow dispute here about the
12 application of documents to English law.

13 What we did in our submission was specify what are
14 the issue ins dispute. We numbered them as three,
15 Mr. Isakoff had grouped two together, but three issues,
16 three issues of English law. They're issues of English law
17 that can be resolved without any discovery. Both Queen's
18 counsel have rendered their opinions on that by reference to
19 the documents and to English law, and neither one said in
20 any way, shape, or form that there were some facts that were
21 necessary, some more information that was necessary to
22 render an opinion on those three liability issues.

23 On the damages issues of course there may be facts
24 and there may be discovery, that's a different question.

25 And so what we tried to do both in our letter to

1 Mr. Isakoff and in our submission was identify what those
2 three issues are and then specify what documents, what
3 discovery might be needed. We don't think really any is
4 necessary, and I think given Mr. Isakoff's concession as to
5 the first point that really doesn't -- it's probably not
6 even disputed, then much of the discovery doesn't, if any,
7 needs to be done. These are really questions of English
8 law.

9 So we think the real question is when you go
10 through each issue, and we've gone through the three issues
11 in our submission, each one is a matter of English law, each
12 one -- on each one the two Queen's counsels rendered their
13 opinion as a strict matter of English law, and then each one
14 of them say no further information is necessary.

15 So we think that's the issue that we should have a
16 liability phase hearing on. And what we've suggested to
17 Your Honor is that we could do a relatively short period of
18 discovery, we suggested 60 days. We could produce the
19 documents that are relevant to those very narrow issues in
20 which LBHI says its needs discovery on those three
21 identified issues, have depositions of the two people that
22 are the source of the anticipatory repudiation, and then
23 have submissions and a hearing with Your Honor. And we had
24 suggested early June, Your Honor, but obviously it'll be
25 subject to Your Honor's schedule.

1 THE COURT: Okay. I was hoping to suppress that
2 whole argument, but I guess I failed.

3 MR. LEEUW: I apologize, Your Honor, for going too
4 far.

5 THE COURT: And I was giving you the chance to
6 express Your Honor because you gave me your whole argument.
7 And what I was really encouraging was that a less polarized
8 approach to the discovery dispute in the context of a meet
9 and confer session focused upon some compromise would be
10 useful. Because this isn't going to be all your way and
11 it's not going to be all Lehman's way, it's going to be my
12 way.

13 MR. LEEUW: We understand that, Your Honor.

14 THE COURT: And I would like my way to be
15 appropriate to allow me to have the benefit of a fully
16 informed record with respect to issues that the parties
17 themselves may be familiar with, but I'm not familiar with
18 at all except from what I've heard in the last couple
19 hearings.

20 The fact that we are dealing with a big ticket
21 dispute in reference to a trophy piece of London real estate
22 that has a storied history in bankruptcy, completely
23 unrelated to Lehman, makes me curious as to why the parties
24 are jockeying for a position preemptively with respect to
25 this. So inquiring minds want to know.

1 That suggests that I will be more inclined in the
2 event of a dispute to be liberal rather than restrictive
3 with respect to discovery, so long as the discovery is in
4 fact relevant to the legal issues in dispute.

5 And so in that spirit I suggest that you proceed
6 to try to work this out with the understanding that if you
7 can't you shouldn't continue fruitlessly disagreeing with
8 one another, you should contact my chambers and schedule an
9 in-person settlement conference with respect to the
10 discovery.

11 I believe that it is premature to set a hearing
12 date until after we resolve what the discovery schedule will
13 look like.

14 Now, having said what I said, I would also like to
15 make clear, I do not want this discovery program to be
16 unduly extensive or burdensome. I would like it to be
17 focused.

18 With that I think I've given you each a little bit
19 of something, and I hope you're successful in working this
20 out.

21 MR. ISAKOFF: Your Honor, could I have just one
22 word?

23 THE COURT: Sure.

24 MR. ISAKOFF: The comment that the first issue
25 concerning whether it's a guarantee or an indemnity that I

1 made some kind of concession that there are no relevant
2 discovery or facts to be discovered. If we were to prevail
3 on the papers (indiscernible - 00:30:25) summary judgment I
4 would say, yes; however, as we've said in our reply papers
5 and as I thought I made clear, that if we were not
6 successful then we would need to take discovery.

7 Now maybe then in discussions we can decide that
8 with respect to that issue that perhaps discovery can be --
9 can await a ruling, and if Your Honor is concerned that the
10 issue is ambiguous and at that point might benefit from
11 parole evidence maybe we'd take discovery at that point.
12 It's not the efficient way to go, but it is a possibility.

13 THE COURT: That's exactly how we proceeded in the
14 Bank of America litigation. My recollection is that we were
15 having summary judgment argument and I determined that I
16 wanted to hear from witnesses.

17 MR. ISAKOFF: Right. And at that point -- by that
18 time discovery -- fact discovery was full and there had been
19 complete document discovery and extensive depositions of all
20 of the relevant witnesses, and that's, you know, obviously
21 on the focus matters here that we're looking for the
22 opportunity to develop the evidentiary record.

23 Thank you.

24 THE COURT: Okay. Nobody is going to win on the
25 basis of the discovery protocol. You're going to win on the

1 merits or lose on the merits. So go forth and be
2 productive.

3 (Laughter)

4 MR. ISAKOFF: Thank you, Your Honor.

5 MR. LEEUW: Thank you, Your Honor.

6 MR. HORWITZ: Good morning, Your Honor, Maurice
7 Horwitz, Weil, Gotshal & Manges on behalf of Lehman Brothers
8 Holdings Inc. and certain of its affiliates.

9 We have now three items that are uncontested on
10 this morning's agenda that we'll try to go through quickly
11 because it is a busy morning.

12 The first two items are related. The debtors'
13 sixty-seventh omnibus objection to claims and the debtors'
14 eighty-fourth omnibus objection to claims. Both were
15 objections seeking to reduce the amount of certain
16 derivative claims -- derivative-based claims filed against
17 the debtors.

18 Four claims -- as to four claims, two on the
19 sixty-seventh and two on the eighty-fourth omnibus objection
20 the responses filed by SPC Group, LLC have been resolved,
21 the allowed amounts that would be on the attached exhibit to
22 these two orders have been modified. We have black lines of
23 those exhibits to provide to the Court and we have
24 supplemental orders that would allow these two objections
25 with respect to these four claims, which we would request